

Hon. Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

INTERVAL LICENSING LLC,

Plaintiff,

v.

AOL, INC., et al.,

Defendants.

No. 2:10-CV-01385-MJP

DEFENDANT APPLE INC.'S MOTION
TO DISMISS FOR FAILURE TO
STATE A CLAIM UPON WHICH
RELIEF CAN BE GRANTED
PURSUANT TO FED. R. CIV. P.
12(B)(6)

NOTE ON MOTION CALENDAR:
November 12, 2010

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant Apple Inc. ("Apple") respectfully moves the Court to dismiss Interval Licensing LLC's ("Interval") Complaint for Patent Infringement ("Complaint"). Interval has failed to state a claim upon which relief can be granted for the reasons set forth in Google Inc. and YouTube LLC's (collectively, "Google") joint Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted Pursuant To Fed. R. Civ. P. 12(b)(6). (Docket No. 62.)

As summarized in Google's motion, Interval repeats the same, generic, conclusory allegations as the putative basis for Interval's infringement claims against each of the eleven defendants. These allegations fail to comply with the pleading requirements set

1 forth in *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009), and *Bell Atlantic Corp. v. Twombly*, 550
 2 U.S. 544 (2007), because the allegations fail to plead sufficient facts to show that Interval
 3 has a plausible claim against Apple and the other defendants. In particular, Interval has
 4 failed to identify:

- 5 • the specific Apple products and/or services, if any, that allegedly infringe;
- 6 • the alleged basis for that infringement (i.e. direct infringement under 35
 7 U.S.C. § 271(a), inducing infringement under § 271(b), and/or contributory
 8 infringement under § 271(c)); and
- 9 • the alleged factual support necessary to satisfy each material element of
 each of the three potential bases of infringement.

10 In short, Interval has sued eleven major corporations and made the same bald assertions that
 11 each defendant infringes 197 claims in four patents. As the U.S. Supreme Court noted in
 12 *Twombly*, it is in this type of situation in which courts should use their “power to insist
 13 upon some specificity in pleading before allowing a potentially massive factual controversy
 14 to proceed.” 550 U.S. at 558 (quotation omitted).

15 In the interest of expeditiously disposing of this case, Apple hereby joins in
 16 Google’s motion and incorporates by reference the authority and arguments presented
 17 therein. Accordingly, based on that authority and those arguments as well as the analysis in
 18 this motion, Apple requests that the Court dismiss Interval’s Complaint against Apple.

19 Apple expressly reserves the right to file its own brief in reply to any opposition
 20 filed by Interval.

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1 DATED: October 21, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

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1 I declare under penalty of perjury under the laws of the State of Washington that the
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3 Dated this 21st day of October, 2010 at Seattle, Washington.

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5 s/ Colette D. Saunders

6 Colette D. Saunders

7 Legal Assistant
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